# BEFORE THE APPEALS BOARD FOR THE KANSAS DIVISION OF WORKERS COMPENSATION

RONNIE BIGWHIP	
Claimant	
VS.	
, )	Docket No. 242,006
KIGHTLINGER'S	·
Respondent )	
AND )	
)	
FEDERATED MUTUAL INSURANCE COMPANY )	
Insurance Carrier )	

# ORDER

Claimant requested review of the preliminary hearing Order denying benefits entered by Administrative Law Judge Bruce E. Moore on June 10, 1999.

#### ISSUES

The issue for Appeals Board review is whether claimant was an employee of respondent and therefore covered by the Workers Compensation Act or whether he was instead an independent contractor.

# FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the briefs of the parties, the Appeals Board finds as follows:

Claimant was injured on February 4, 1999 when he fell down some stairs at a house he was repairing for Norman Kightlinger. Respondent is a lumberyard owned by Mr. Kightlinger.

The ALJ found claimant failed to prove his injury arose out of and in the course of his employment with respondent because claimant was an independent contractor and not an employee of respondent. The ALJ further found that even if the claimant proved an employer/employee relationship, claimant was an employee of Norman Kightlinger as an individual and not the lumberyard. Thus, the ALJ held the Act again would not apply because Norman Kightlinger as an individual had insufficient payroll to come within its provisions.

The Appeals Board finds the ALJ's Order should be affirmed. The Appeals Board does so for the reasons set forth in the ALJ's Order. The Order sets out findings of fact and conclusions of law that are accurate and supported by the record. It is not necessary to repeat those findings and conclusions in this order. Therefore, the Appeals Board adopts the ALJ's findings and conclusions as its own as if specifically set forth herein.

Furthermore, both claimant and Mr. Kightlinger testified at the preliminary hearing. Their testimony differed in several key respects. Where there was a conflict, the ALJ accepted the testimony of Mr. Kightlinger over that of claimant. The Board gives some deference to the ALJ's assessment of credibility.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Order should be, and is hereby, affirmed in all respects.

### IT IS SO ORDERED.

Dated this	day of September 19	999
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### **BOARD MEMBER**

c: Russell B. Cranmer, Wichita, KS
Vincent A. Burnett, Wichita, KS
Bruce E. Moore, Administrative Law Judge
Philip S. Harness, Director